



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2015-0743; FRL-9944-74-Region 4]

Air Plan Approval and Designation of Areas; MS; Redesignation of the DeSoto County, 2008 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 11, 2015, the State of Mississippi, through the Mississippi Department of Environment Quality (MDEQ), submitted a request for the Environmental Protection Agency (EPA) to redesignate the portion of Mississippi that is within the Memphis, Tennessee-Mississippi-Arkansas (Memphis, TN-MS-AR) 2008 8-hour ozone nonattainment area (hereafter referred to as the “Memphis, TN-MS-AR Area” or “Area”) and a related State Implementation Plan (SIP) revision containing a maintenance plan for the Area. EPA is taking the following separate final actions related to the December 11, 2015, redesignation request and SIP revision: determining that the Memphis, TN-MS-AR Area is attaining the 2008 8-hour ozone national ambient air quality standards (NAAQS); approving the State’s plan for maintaining attainment of the 2008 8-hour ozone NAAQS in the Area, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_x) and volatile organic compounds (VOC) for the year 2027 for the Mississippi portion of the Area, into the SIP; and redesignating the Mississippi portion of the Area to attainment for the 2008 8-hour ozone NAAQS. Additionally, EPA finds the 2027 MVEBs for the Mississippi portion of the Area adequate for the purposes of transportation conformity.

DATES: This rule will be effective [insert date 30 days after date of publication in the **Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0743. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Lakeman may be reached by phone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background for Final Actions.

On May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS that was promulgated on March 27, 2008. *See* 77 FR 30088. The Memphis, TN-MS-AR Area was designated nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. *See* 77 FR 30088. The Memphis, TN-MS-AR Area consists of a portion of DeSoto County in Mississippi, all of Shelby County in Tennessee, and all of Crittenden County in Arkansas. At the time of designation, the Memphis, TN-MS-AR Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. In the final implementation rule for the 2008 8-hour ozone NAAQS (SIP Implementation Rule),¹ EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the Clean Air Act (CAA or Act). This established an attainment date three years after the July 20, 2012, effective date for areas classified as marginal areas for the 2008 8-hour ozone nonattainment designations. Therefore, the Memphis, TN-MS-AR Area's attainment date is July 20, 2015.

On December 11, 2015, MDEQ requested that EPA redesignate Mississippi's portion of the Memphis, TN-MS-AR Area to attainment for the 2008 8-hour ozone NAAQS and submitted a SIP revision containing the State's plan for maintaining attainment of the 2008 8-hour ozone

¹ This rule, entitled Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements and published at 80 FR 12264 (March 6, 2015), addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), major new source review (NSR), emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS are revoked.

standard in the Area, including the MVEBs for NO_x and VOC for the year 2027 for the Mississippi portion of the Area.² In a notice of proposed rulemaking (NPRM) published on February 11, 2016, EPA proposed to determine that the Memphis, TN-MS-AR Area is attaining the 2008 8-hour ozone NAAQS; to approve and incorporate into the Mississippi SIP the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including the 2027 MVEBs for NO_x and VOC for Mississippi's portion of Memphis, TN-MS-AR Area; and to redesignate the Mississippi portion of the Area to attainment for the 2008 8-hour ozone NAAQS. *See* 81 FR 7269. In that notice, EPA also notified the public of the status of the Agency's adequacy determination for the NO_x and VOC MVEBs for Mississippi's portion of Memphis, TN-MS-AR Area. No comments were received on the February 11, 2016, proposed rulemaking. The details of Mississippi's submittal and the rationale for EPA's actions are further explained in the NPRM. *See* 81 FR 7269 (February 11, 2016).

II. What are the Effects of These Actions?

Approval of Mississippi's redesignation request changes the legal designation of DeSoto County in the Mississippi portion of the Memphis, TN-MS-AR Area, found at 40 CFR 81.325, from nonattainment to attainment for the 2008 8-hour ozone NAAQS. Approval of Mississippi's associated SIP revision also incorporates a plan into the SIP for maintaining the 2008 8-hour ozone NAAQS in the Mississippi portion of the Memphis, TN-MS-AR Area through 2027. The maintenance plan establishes NO_x and VOC MVEBs for 2027 for the DeSoto County portion of the Memphis, TN-MS-AR Area and includes contingency measures to remedy any future

² The Mississippi Commission on Environmental Quality adopted the SIP revision containing the maintenance plan on December 2, 2015.

violations of the 2008 8-hour ozone NAAQS and procedures for evaluating potential violations. The MVEBs for the Mississippi portion of the Memphis, TN-MS-AR Area, along with the allocations from the safety margin, are provided in the table below.³

MVEBs for the Mississippi portion of the Memphis, TN-MS-AR Area (tpd)

	2027	
	NO_x	VOC
On-Road Emissions	2.74	2.54
Safety Margin Allocated to MVEB	5.26	2.46
Conformity MVEB	8.00	5.00

III. Final Actions.

EPA is taking three separate final actions regarding Mississippi's December 11, 2015, request to redesignate the Mississippi portion of the Memphis, TN-MS-AR Area to attainment and associated SIP revision. First, EPA is determining that the Memphis, TN-MS-AR Area is attaining the 2008 8-hour ozone NAAQS.

Second, EPA is approving and incorporating the maintenance plan for the Memphis, TN-MS-AR Area, including the NO_x and VOC MVEBs for 2027, into the Mississippi SIP. The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS through 2027.

Third, EPA is determining that Mississippi has met the criteria under CAA section 107(d)(3)(E) for redesignation of the State's portion of the Memphis, TN-MS-AR Area from

³ As discussed in the NPRM, the safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. Mississippi chose to allocate a portion of the available safety margin to the NO_x and VOC MVEBs for 2027. MDEQ has allocated 5.26 tpd of the NO_x safety margin to the 2027 NO_x MVEB and 2.46 tpd of the VOC safety margin to the 2027 VOC MVEB.

nonattainment to attainment for the 2008 8-hour ozone NAAQS. On this basis, EPA is approving Mississippi's redesignation request. As mentioned above, approval of the redesignation request changes the official designation of DeSoto County in the Mississippi portion of the Memphis, TN-MS-AR Area for the 2008 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

EPA is also notifying the public that EPA finds the newly-established NO_x and VOC MVEBs for the Mississippi portion of the Memphis, TN-MS-AR Area adequate for the purpose of transportation conformity. Within 24 months from this final rule, the transportation partners will need to demonstrate conformity to the new NO_x and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting Federal requirements and do not

impose additional requirements beyond those imposed by state law. For this reason, these actions:

- are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: March 29, 2016.

Heather McTeer Toney,
Regional Administrator,
Region 4.

40 CFR parts 52 and 81 are amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart Z – Mississippi

2. Section 52.1270(e) is amended by adding an entry for “2008 8-hour ozone Maintenance Plan for the DeSoto County portion of Memphis, TN-AR-MS Nonattainment Area” at the end of the table to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) * * *

EPA Approved Mississippi Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	**	*	
2008 8-hour ozone Maintenance Plan for the DeSoto County portion of Memphis, TN-AR-MS Nonattainment Area	DeSoto County portion of Memphis, TN-AR-MS Nonattainment Area	12/2/2015	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

PART 81-DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

4. In § 81.325, the table entitled “Mississippi-2008 8-Hour Ozone NAAQS (Primary and secondary)” is amended under “Memphis, TN-MS-AR:” by revising the entry for “DeSoto

County (part) Portion along MPO Lines” to read as follows:

§ 81.325 Mississippi.

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Mississippi-2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Memphis, TN-MS-AR: ²				
DeSoto County (part) Portion along MPO Lines	<u>[Insert date of publication in the Federal Register]</u>	Attainment		
**	**	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

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[FR Doc. 2016-08155 Filed: 4/7/2016 8:45 am; Publication Date: 4/8/2016]